

HOUSE BILL 3069
By Fowlkes

AN ACT to amend Tennessee Code Annotated, Section 8-16-401 and Title 23, Chapter 3, relative to the unauthorized practice of law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 23-3-101, is amended by deleting the language "firm, association, or corporation," and "firm, association, or corporation" wherever they appear.

SECTION 2. Tennessee Code Annotated, Section 23-3-101, is further amended by deleting the word "and" at the end of subdivision (1); by deleting the period at the end of subdivision (2) and by substituting instead a semi-colon and the word "and"; and by inserting the following as a new subdivision (3) thereto:

(3) "Person" means a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

SECTION 3. Tennessee Code Annotated, Section 23-3-103, is amended by deleting the current language in its entirety and by substituting instead the following:

(a)

(1) No person shall engage in the "practice of law" or do "law business," or both, as defined in § 23-3-101, unless such person has been duly licensed therefore, and while such person's license therefore is in full force and effect, nor shall any association or corporation engage in the "practice of the law" or do "law business," or both, as defined in § 23-3-101. However, nonresident attorneys associated with attorneys in this state in any case pending in Tennessee who do

not practice regularly in this state will be allowed as a matter of courtesy to appear in such case in which they may be thus employed without procuring a license, when introduced to the court by a member in good standing of the Tennessee bar if all the courts of the resident state of the nonresident attorney grant a similar courtesy to attorneys licensed in this state.

(2) For the purposes of this part, unless specifically authorized by state or federal law, a person is engaged in “law business” or the “practice of law” if that person advises or assists in selecting or completing forms affecting or relating to a person’s legal rights or interests under Tennessee law, or a person’s legal rights or interests under federal law applicable to Tennessee residents, property or interests, if done in a representative capacity or for valuable consideration.

(b) Any person who violates the prohibition in subsection (a) commits a Class A misdemeanor.

(c)

(1) The attorney general and reporter may bring an action in the name of the state to restrain by temporary restraining order, temporary injunction, or permanent injunction any violation of this part; to obtain a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation; and to obtain restitution for any person who has suffered an ascertainable loss by reason of the violation of this part. The attorney general and reporter shall be entitled to be reimbursed for the reasonable costs and expenses of investigation and prosecution of acts under this part, including, but not limited to, reasonable attorney fees as well as expert and other witness fees.

(2) The action may be brought in a court of competent jurisdiction:

(A) In the county where the alleged violation took place or is about to take place;

(B) In the county in which the defendant resides, has a principal place of business, or conduct, transacts, or has conducted business; or

(C) If the defendant cannot be found in any of the above locations, in the county in which the defendant can be found.

(3) The courts are authorized to issue orders and injunctions to restrain, prevent and remedy violations of this part, and such orders and injunctions shall be issued without bond.

(4) Any knowing violation of the terms of an injunction or order issued pursuant to this part shall be punishable by a civil penalty of not more than twenty thousand dollars (\$20,000) per violation, in addition to any other appropriate relief.

(d)

(1) Any organized bar association of a municipality, county (except any county having a metropolitan form of government), or multi-county region having a population in excess of one hundred thousand (100,000), in which a violation occurs may bring a civil action seeking relief, as provided in this part, against any person that violates the provisions of this part. Any organized statewide bar association, primarily representing plaintiff attorneys and having no locally-based affiliate associations, may bring a civil action in the municipality or county in which a violation occurs seeking relief, as provided in this part, against any person that violates the provisions of this part. Upon the commencement of any action brought under this section by any bar association, the bar association shall provide a copy of the complaint or other initial pleading to the attorney general

and reporter, who in the public interest may intervene and prosecute the action. Such pleadings shall be provided to the attorney general and reporter simultaneously with the initial service to the defendant or defendants. Additionally, all subsequent filings shall be provided to the attorney general and reporter, including any judgments or notices of appeal by the initiating bar association.

(2) Any bar association bringing suit under this section is presumed to be acting in good faith and is granted a qualified immunity for the suit and the consequences of the suit. The presumption of good faith is rebuttable upon a showing by a preponderance of the evidence that the suit was brought for a malicious purpose.

SECTION 4. Tennessee Code Annotated, Section 23-3-104, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) Except as provided in the Tennessee Rules of Professional Conduct, it is unlawful for any licensed attorney in the state to divide any fees or compensation received in the "practice of law" or in doing "law business" with any person not a licensed attorney.

(b) A violation of this section is a Class C misdemeanor.

SECTION 5. Tennessee Code Annotated, Title 23, Chapter 3, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

(a)

(1) Any person who suffers a loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, as a result of action or conduct by any person that is declared to be unlawful under § 23-3-103, § 23-3-104 or § 23-3-108, may bring an action to recover an amount

equal to the sum of treble any actual damages sustained by the person and treble any amount paid by the person and may be afforded such other relief as the court considers necessary and proper.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged acts or conduct took place or is taking place, or in the county in which the defendant resides, the defendant has a principal place of business, conducts, transacts, or has transacted business, or, if the defendant cannot be found in any of the foregoing locations, in the county in which the defendant can be found.

(3) If the court finds that the defendant knowingly or willfully engaged in unlawful acts or conduct under § 23-3-103, § 23-3-104 or § 23-3-108, the court may award treble the actual damages sustained and treble the amount paid and may provide such other relief as it considers necessary and proper.

(4)

(A) Any person who has been affected by an act or conduct declared to be a violation of § 23-3-103, § 23-3-104 or § 23-3-108 may accept any written reasonable offer of settlement made by the person or persons considered to have violated this part; provided, that the tender of acceptance of such a settlement offer shall not abate any proceeding commenced by the attorney general and reporter under this part.

(B) Such a settlement may be set aside by a court of competent jurisdiction at the request of the affected person if such a request is made within one (1) year from the date of the settlement agreement and if the court finds the settlement to be unreasonable. If the person was not represented by legal counsel at the time of the offer of settlement, the

person claiming the benefit of the settlement shall have the burden of establishing that it is reasonable.

(5) Any permanent injunction, judgment, or final court order made pursuant to § 23-3-103(c)(1), which has not been complied with, shall be prima facie evidence of the violation of this part in any action brought pursuant to this section.

(6) Upon a finding by the court that a provision of § 23-3-103, § 23-3-104 or § 23-3-108 has been violated, the person bringing such action shall be entitled to be reimbursed for the reasonable costs and expenses of investigation and prosecution of acts under this part, including, but not limited to, reasonable attorney fees as well as expert and other witness fees.

(b) The provisions of this section shall not apply to an action initiated by the attorney general and reporter, any district attorney general or bar association as defined in § 23-3-103(d).

(c)

(1) Upon the commencement of any action brought under this section, the plaintiff shall mail a copy of the complaint or other initial pleading to the attorney general and reporter, who in the public interest may intervene in the case. If the attorney general and reporter do not intervene, the plaintiff shall mail a copy of such judgment, order or decree to the attorney general and reporter upon the entry of any judgment, order, or decree in the action.

(2) If a party to action under this section appeals a judgment, order or decree concluding this action, a copy of the notice of appeal shall be served by the appellant upon the attorney general and reporter, who in the public interest may intervene on appeal.

(d) Any private action commenced pursuant to this section shall be brought within three (3) years from the person's discovery of the unlawful act or conduct.

SECTION 6. Tennessee Code Annotated, Section 8-16-401, is amended by designating the current language as subsection (a) and by inserting the following as a new subsection (b) thereto:

(b) A notary public who is not an attorney licensed to practice law in this state is prohibited from advising or assisting in selecting or completing forms affecting or relating to a person's immigration status unless that conduct is specifically authorized by federal law.

SECTION 7. This act shall take effect July 1, 2006, the public welfare requiring it.